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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOSEPH MENICHIELLO, individually )	Case No.
and on behalf of all others similarly )	
situated, )	<b><u>CLASS ACTION</u></b>
)	
Plaintiff, )	<b>COMPLAINT FOR VIOLATIONS</b>
)	<b>OF:</b>
vs. )	
)	1. NEGLIGENT VIOLATIONS
FIRST ATLANTIC FUNDING, LLC, )	OF THE TELEPHONE
)	CONSUMER PROTECTION
)	ACT [47 U.S.C. §227 ET
Defendants. )	SEQ.]
)	2. WILLFUL VIOLATIONS
)	OF THE TELEPHONE
)	CONSUMER PROTECTION
)	ACT [47 U.S.C. §227 ET
)	SEQ.]
)	
)	<b><u>DEMAND FOR JURY TRIAL</u></b>
)	

Plaintiff, Joseph Menichiello ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of First Atlantic Funding, LLC, (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

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**JURISDICTION & VENUE**

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in Florida state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the CENTRAL District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the state of California and the county of Orange.

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**PARTIES**

24 4. Plaintiff, Joseph Menichiello (“Plaintiff”), is a natural person residing in Orange, California and is a “person” as defined by 47 U.S.C. § 153 (10).

25 5. Defendant, First Atlantic Funding, LLC (“Defendant”), is a leader in providing business loans, and is a “person” as defined by 47 U.S.C. § 153 (10).

26 6. The above named Defendant, and its subsidiaries and agents, are  
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1 collectively referred to as “Defendants.” The true names and capacities of the  
2 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
3 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
4 names. Each of the Defendants designated herein as a DOE is legally responsible  
5 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
6 Complaint to reflect the true names and capacities of the DOE Defendants when  
7 such identities become known.

8 7. Plaintiff is informed and believes that at all relevant times, each and  
9 every Defendant was acting as an agent and/or employee of each of the other  
10 Defendants and was acting within the course and scope of said agency and/or  
11 employment with the full knowledge and consent of each of the other Defendants.  
12 Plaintiff is informed and believes that each of the acts and/or omissions complained  
13 of herein was made known to, and ratified by, each of the other Defendants.

#### 14 **FACTUAL ALLEGATIONS**

15 8. Beginning in or around September of 2015, Defendant contacted  
16 Plaintiff on his cellular telephone, (714) 697-7270, in an attempt to solicit its  
17 services to Plaintiff.

18 9. Defendant used an “automatic telephone dialing system”, as defined  
19 by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the  
20 debt allegedly owed by his mother

21 10. Defendant’s calls constituted calls that were not for emergency  
22 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

23 11. Defendant’s calls were placed to telephone number assigned to a  
24 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
25 pursuant to 47 U.S.C. § 227(b)(1).

26 12. Plaintiff has never provided any personal information, including his  
27 cellular telephone number, to Defendant for any purpose whatsoever. Accordingly,  
28 Defendant never received Plaintiff’s “prior express consent” to receive calls using

1 an automatic telephone dialing system or an artificial or prerecorded voice on his  
2 cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

3 **CLASS ALLEGATIONS**

4 13. Plaintiff brings this action on behalf of himself and all others similarly  
5 situated, as a member of the proposed class (hereafter “The Class”) defined as  
6 follows:

7 All persons within the United States who received any  
8 solicitation telephone calls from Defendant to said  
9 person’s cellular telephone made through the use of any  
10 automatic telephone dialing system and such person had  
11 not previously consented to receiving such calls within  
12 the four years prior to the filing of this Complaint

13 14. Plaintiff represents, and is a member of, The Class, consisting of All  
14 persons within the United States who received any collection telephone calls from  
15 Defendant to said person’s cellular telephone made through the use of any  
16 automatic telephone dialing system and such person had not previously not  
17 provided their cellular telephone number to Defendant within the four years prior  
18 to the filing of this Complaint.

19 15. Defendant, its employees and agents are excluded from The Class.  
20 Plaintiff does not know the number of members in The Class, but believes the Class  
21 members number in the thousands, if not more. Thus, this matter should be  
22 certified as a Class Action to assist in the expeditious litigation of the matter.

23 16. The Class is so numerous that the individual joinder of all of its  
24 members is impractical. While the exact number and identities of The Class  
25 members are unknown to Plaintiff at this time and can only be ascertained through  
26 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
27 The Class includes thousands of members. Plaintiff alleges that The Class  
28 members may be ascertained by the records maintained by Defendant.

1           17. Plaintiff and members of The Class were harmed by the acts of  
2 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
3 and Class members via their cellular telephones thereby causing Plaintiff and Class  
4 members to incur certain charges or reduced telephone time for which Plaintiff and  
5 Class members had previously paid by having to retrieve or administer messages  
6 left by Defendant during those illegal calls, and invading the privacy of said  
7 Plaintiff and Class members.

8           18. Common questions of fact and law exist as to all members of The  
9 Class which predominate over any questions affecting only individual members of  
10 The Class. These common legal and factual questions, which do not vary between  
11 Class members, and which may be determined without reference to the individual  
12 circumstances of any Class members, include, but are not limited to, the following:

13           a. Whether, within the four years prior to the filing of this  
14 Complaint, Defendant made any collection call (other than a call made for  
15 emergency purposes or made with the prior express consent of the called party) to  
16 a Class member using any automatic telephone dialing system to any telephone  
17 number assigned to a cellular telephone service;

18           b. Whether Plaintiff and the Class members were damages  
19 thereby, and the extent of damages for such violation; and

20           c. Whether Defendant should be enjoined from engaging in such  
21 conduct in the future.

22           19. As a person that received numerous collection calls from Defendant  
23 using an automatic telephone dialing system, without Plaintiff's prior express  
24 consent, Plaintiff is asserting claims that are typical of The Class.

25           20. Plaintiff will fairly and adequately protect the interests of the members  
26 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
27 class actions.

28           21. A class action is superior to other available methods of fair and

1 efficient adjudication of this controversy, since individual litigation of the claims  
2 of all Class members is impracticable. Even if every Class member could afford  
3 individual litigation, the court system could not. It would be unduly burdensome  
4 to the courts in which individual litigation of numerous issues would proceed.  
5 Individualized litigation would also present the potential for varying, inconsistent,  
6 or contradictory judgments and would magnify the delay and expense to all parties  
7 and to the court system resulting from multiple trials of the same complex factual  
8 issues. By contrast, the conduct of this action as a class action presents fewer  
9 management difficulties, conserves the resources of the parties and of the court  
10 system, and protects the rights of each Class member.

11 22. The prosecution of separate actions by individual Class members  
12 would create a risk of adjudications with respect to them that would, as a practical  
13 matter, be dispositive of the interests of the other Class members not parties to such  
14 adjudications or that would substantially impair or impede the ability of such non-  
15 party Class members to protect their interests.

16 23. Defendant has acted or refused to act in respects generally applicable  
17 to The Class, thereby making appropriate final and injunctive relief with regard to  
18 the members of the California Class as a whole.

### 19 **FIRST CAUSE OF ACTION**

#### 20 **Negligent Violations of the Telephone Consumer Protection Act**

#### 21 **47 U.S.C. §227 et seq.**

22 24. Plaintiff repeats and incorporates by reference into this cause of  
23 action the allegations set forth above at Paragraphs 1-23.

24 25. The foregoing acts and omissions of Defendant constitute numerous  
25 and multiple negligent violations of the TCPA, including but not limited to each  
26 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

27 26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et  
28 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory

1 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

2 27. Plaintiff and the Class members are also entitled to and seek  
3 injunctive relief prohibiting such conduct in the future.

4 **SECOND CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
6 **Act**

7 **47 U.S.C. §227 et seq.**

8 (Against All Defendants)

9 28. Plaintiff repeats and incorporates by reference into this cause of  
10 action the allegations set forth above at Paragraphs 1-27.

11 29. The foregoing acts and omissions of Defendant constitute numerous  
12 and multiple knowing and/or willful violations of the TCPA, including but not  
13 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et  
14 seq.

15 30. As a result of Defendant's knowing and/or willful violations of 47  
16 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of  
17 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
18 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 31. Plaintiff and the Class members are also entitled to and seek  
20 injunctive relief prohibiting such conduct in the future.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227 et seq.**

- 26 • As a result of Defendant's negligent violations of 47 U.S.C. §  
27 227(b)(1), Plaintiff and the Class members are entitled to and request  
28 \$500 in statutory damages, for each and every violation, pursuant to

1           47 U.S.C. § 227(b)(3)(B).

- 2           • Any and all other relief that the Court deems just and proper.

3                           **SECOND CAUSE OF ACTION**

4           **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
5                           **Act**

6                           **47 U.S.C. §227 et seq.**

- 7           • As a result of Defendant's willful and/or knowing violations of 47  
8           U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to  
9           and request treble damages, as provided by statute, up to \$1,500, for  
10          each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and  
11          47 U.S.C. § 227(b)(3)(C).  
12          • Any and all other relief that the Court deems just and proper.

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14          Respectfully Submitted this 5<sup>th</sup> Day of October, 2015.

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16                           LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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18                           By: /s/ Todd M. Friedman  
19                                 Todd M. Friedman  
20                                 Law Offices of Todd M. Friedman  
21                                 Attorney for Plaintiff  
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